

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER LEE KELLY,

Plaintiff,
v.

Civil Action No. 2:16-CV-13218
HONORABLE GERALD E. ROSEN
UNITED STATES DISTRICT JUDGE

SAGINAW COUNTY,

Defendant,
_____ /

OPINION AND ORDER SUMMARILY DISMISSING THE COMPLAINT

I. Introduction

Before the Court is Plaintiff Roger Lee Kelly's *pro se* civil complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff is a prisoner incarcerated at the Ionia Maximum Correctional Facility in Ionia, Michigan. Plaintiff has now filed a motion to withdraw his cause of action. For the reasons stated below, the motion to withdraw is granted and the complaint is **DISMISSED WITHOUT PREJUDICE.**

II. Discussion

Fed.R.Civ.P. 41(a) provides that a plaintiff may dismiss an action without order of court by filing a notice of dismissal before service by the adverse party of an answer or motion for summary judgment. *See also Doran v. McGinnis*, 158 F.R.D. 383, 389 (E.D. Mich. 1994). Plaintiff is entitled to a voluntary dismissal of his civil rights complaint, in light of the fact that the defendant has not yet been served in this case, nor have they filed an answer to the complaint or motions to dismiss or for summary judgment. *Id.*

III. ORDER

Based upon the foregoing, the motion to withdraw the cause of action is **GRANTED** and the complaint is **DISMISSED WITHOUT PREJUDICE**.

s/Gerald E. Rosen
United States District Judge

Dated: October 11, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 11, 2016, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135